

1 AMENDMENT TO SENATE BILL 1497

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1497, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Managed Care Reform and Patient Rights  
6 Act is amended by adding Section 97 as follows:

7 (215 ILCS 134/97 new)

8 Sec. 97. Health maintenance organization liability.

9 (a) In this Section:

10 "Appropriate and medically necessary" means the standard  
11 for health care services as determined by physicians and  
12 health care providers in accordance with the prevailing  
13 practices and standards of the medical profession and  
14 community.

15 "Enrollee" means an individual who is enrolled in a  
16 health care plan, including covered dependents.

17 "Health care plan" has the meaning ascribed to that term  
18 in Section 10 of this Act.

19 "Health care provider" means a person or entity as  
20 defined in Section 2-1003 of the Code of Civil Procedure.

21 "Health care treatment decision" means a determination  
22 made when medical services are actually provided by the

1 health care plan and that directly determines the diagnosis,  
2 care, or treatment provided to the patient enrolled in the  
3 health care plan. The definition of "health care treatment  
4 decision" shall not include coverage determinations or  
5 decisions relating to the design, administration, or  
6 operation of the health care plan.

7 "Health maintenance organization" means an organization  
8 licensed under the Health Maintenance Organization Act.

9 "Physician" means: (1) an individual licensed to practice  
10 medicine in this State; (2) a professional association,  
11 professional service corporation, partnership, medical  
12 corporation, or limited liability company, entitled to  
13 lawfully engage in the practice of medicine; or (3) another  
14 person wholly owned by physicians.

15 "Ordinary care" means, in the case of a health  
16 maintenance organization, that degree of care that a health  
17 maintenance organization of ordinary prudence would use under  
18 the same or similar circumstances. In the case of a person  
19 who is an employee, agent, or ostensible agent of a health  
20 maintenance organization, "ordinary care" means that degree  
21 of care, skill, and proficiency that a person of ordinary  
22 prudence in the same profession, specialty, or area of  
23 practice as such person would use in the same or similar  
24 circumstances.

25 (b) A health maintenance organization is liable for  
26 damages for harm to an enrollee proximately caused by the  
27 failure to exercise ordinary care in health care treatment  
28 decisions made by its:

- 29 (1) employees;
- 30 (2) actual agents;
- 31 (3) ostensible agents.

32 (c) The standard in subsection (b) creates no obligation  
33 on the part of the health maintenance organization to provide  
34 to an enrollee treatment that is not covered by the health

1 care plan, and the failure to provide treatment not covered  
2 by the health care plan cannot form the basis of liability  
3 under this Section.

4 (d) A health maintenance organization may not enter into  
5 a contract with a physician, hospital, or other health care  
6 provider or pharmaceutical company which includes an  
7 indemnification or hold harmless clause for the acts or  
8 conduct of the health maintenance organization. Any such  
9 indemnification or hold harmless clause in an existing  
10 contract is hereby declared void. Nothing in this subsection  
11 shall be construed to invalidate provisions in contracts with  
12 providers indemnifying the health maintenance organization  
13 for the acts or conduct of the providers.

14 (e) Nothing in any law of this State prohibiting any  
15 individual or entity from practicing medicine or being  
16 licensed to practice medicine may be asserted as a defense by  
17 the health maintenance organization in an action brought  
18 against it pursuant to this Section or any other law.

19 (f) Neither the listing or designation of a physician or  
20 other health care provider as an approved health care  
21 provider in materials made available to enrollees under a  
22 health care plan or efforts by the health maintenance  
23 organization to comply with State or federally mandated  
24 quality assurance requirements shall be evidence that the  
25 provider is the actual, ostensible, or implied agent of the  
26 health maintenance organization.

27 (g) This Section does not apply to workers' compensation  
28 insurance coverage subject to the Workers' Compensation Act.

29 (h) This Section does not apply to actions seeking only  
30 a review of an adverse utilization review determinations,  
31 coverage decisions, or other decisions for which review under  
32 Section 45 or 50 of this Act is available.

33 (i) This Section applies only to causes of action that  
34 accrue on or after the effective date of this amendatory Act

1 of the 92nd General Assembly.

2 (j) This Section does not apply to licensed insurance  
3 agents.

4 (k) This Section does not preclude any person from  
5 seeking appropriate relief otherwise available under the law.

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.".